

Chris Ball (“Ball”) appeals from his conviction of resisting law enforcement,¹ a Class A misdemeanor. Ball also was convicted of disorderly conduct, but does not challenge that conviction here. Ball presents the following issue for our review: whether the evidence is sufficient to support his conviction of forcibly resisting law enforcement.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 11, 2008, Officer Richard Eldridge of the Indianapolis Metropolitan Police Department observed a minivan pull over to the side of the road and begin rocking back and forth. After Officer Eldridge observed Ball swing his arm toward the female passenger hitting her in the head, Officer Eldridge activated his emergency lights. Ball attempted to open the driver’s side door, shut it, and then swung his arm toward the female passenger hitting her in the head a second time. Officer Eldridge approached the van and asked Ball to exit the vehicle. After Ball exited the van, Officer Eldridge handcuffed and Mirandized him.

Ball asked why he was being placed under arrest. When Officer Eldridge told Ball he had observed Ball hit his female passenger twice, Ball made aggressive, rude comments toward Officer Eldridge. Officer Eldridge placed Ball in his patrol car while he completed some paperwork. Ball cursed and lunged at Officer Eldridge, leaning forward so close to Officer Eldridge that the saliva from Ball’s mouth was hitting Officer Eldridge on the back of the neck.

¹ See Ind. Code § 35-44-3-3(a)(1).

Officer Eldridge told Ball that he needed to calm down and sit back in the vehicle. Ball ignored the instruction and again lunged toward Officer Eldridge. Officer Eldridge began to fear for his own safety. Officer Eldridge exited the patrol car and asked Ball to exit the patrol car. When Ball refused, Officer Eldridge forcibly pulled Ball from the patrol car and placed him on the ground for safety reasons.

Another officer watched Ball while Officer Eldridge completed his paperwork. Ball continued to yell, curse, and spit at Officer Eldridge and the other officers present. At one point, Ball, referring to his passenger, stated to Officer Eldridge, “I will beat your ass like I beat hers.” *Tr.* at 31. Ball was so loud and abusive that passersby were slowing down or stopping their vehicles to see what was happening.

Ball was charged with battery by bodily waste, a Class D felony; domestic battery, a Class A misdemeanor; battery, a Class A misdemeanor; resisting law enforcement, a Class A misdemeanor; and disorderly conduct, a Class B misdemeanor. The State dismissed the battery by bodily waste charge.

At the conclusion of Ball’s bench trial, the trial court granted Ball’s motion for judgment on the evidence as to the domestic battery and battery count, but found Ball guilty of resisting law enforcement and disorderly conduct. The trial court sentenced Ball to ninety days executed for each of his convictions, to be served concurrently. Ball now appeals his resisting law enforcement conviction.

DISCUSSION AND DECISION

Our standard of review for a challenge to the sufficiency of the evidence is well-settled. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the conviction. *Boyd v. State*, 889 N.E.2d 321, 325 (Ind. Ct. App. 2008). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorable to the trial court's ruling. *Id.* We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id.*

Ball claims that there is insufficient evidence to support his conviction of resisting law enforcement. More specifically, he claims that there is insufficient evidence that his conduct amounted to more than passive resistance.

Indiana Code section 35-44-3-3(a)(1) provides as follows:

A person who knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties . . . commits resisting law enforcement, a Class A misdemeanor.

In *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993), the Supreme Court found that the evidence was not sufficient to support a defendant's conviction of resisting law enforcement absent any evidence of strength, power, or violence or any movement or threatening gesture directed toward the law enforcement official. Later, in *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998), a panel of this court found that the evidence was

insufficient to establish that the defendant acted forcibly, where the defendant did nothing more than stand his ground. In *Ajabu*, the evidence of resistance was the defendant's refusal to release a flag to the police officer, twisting and turning a little as he held on to the flag. *Id.* at 496.

In *Guthrie v. State*, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999), *trans. denied* (2000), a panel of this court disagreed with Guthrie's argument that he passively resisted arrest and found that sufficient evidence existed to sustain his conviction for forcibly resisting arrest. There, Guthrie was arrested and transported to lockup where he refused to exit the vehicle, and refused to stand after he was physically removed from the vehicle. Guthrie leaned back and kept his legs straight, forcing the officers to carry him to the receiving area. We held that Guthrie applied some force, which required the officers to exert force to counteract Guthrie's acts of resistance. *Id.* at 8. Likewise, in *Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005), this court affirmed the defendant's conviction based on the defendant's acts of turning and pushing away from the officers and stiffening up when the officers attempted to place him into a transport vehicle. In *Johnson*, this court acknowledged that the definition of "forcibly resist" as defined in *Spangler*, was "moderated," or relaxed. *Id.* at 519.

Spangler seems to require some threatening gesture or movement toward the law enforcement officer, yet later cases have relaxed the definition of "forcibly." *See Johnson*, 833 N.E.2d at 519; *Guthrie*, 720 N.E.2d at 9. Those later cases have, instead, required the exertion of force by the law enforcement officer in response to, and in order to compel the arrestee's compliance with being handcuffed. Furthermore, this court has held that Indiana

Code section 35-44-3-3 does not demand an overly strict definition of “forcibly resist.” *See Johnson*, 833 N.E.2d at 519.

The cases cited by Ball in support of his position are distinguishable from the present case. In *White v. State*, 545 N.E.2d 1124, 1126 (Ind. Ct. App. 1989), we reversed the defendant’s conviction for resisting law enforcement where he stood in the middle of a driveway to block the path of a tow truck called by the police to remove his vehicle containing stolen property. In *Braster v. State*, 596 N.E.2d 278, 280 (Ind. Ct. App. 1992), we reversed a defendant’s conviction for resisting law enforcement where the defendant, who was standing in the kitchen, refused to comply with officers’ commands to drop to the floor, requiring an officer to sweep the defendant’s legs out from underneath him. We held that even though that defendant failed to obey the officers’ instruction, there was no force involved on the part of that defendant. *Id.*

Here, Ball did more than passively refuse to cooperate with Officer Eldridge. Ball was placed inside a patrol car when he became verbally abusive toward Officer Eldridge and other officers on the scene. Ball then continued his verbal abuse of Officer Eldridge leaning forward close enough to spit on the back of Officer Eldridge’s neck while he yelled. Officer Eldridge became concerned for his safety and told Ball that he needed to calm down and sit back in the patrol car. Ball ignored that instruction and violently lunged toward Officer Eldridge. When Officer Eldridge asked Ball to exit the patrol car, he refused to do so, requiring Officer Eldridge to forcibly pull Ball from the car and place him on the ground for safety reasons. Ball continued his verbal and physical aggression toward the officers, spitting

towards them and telling Officer Eldridge, “I will beat your ass like I beat hers.” *Tr.* at 31. He was so loud and abusive that passersby were slowing down or stopping their vehicles to see what was happening. The evidence was sufficient to support Ball’s conviction for resisting law enforcement.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.